IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 6386/2005
Janva Chaudhary Samaj Dantiwada & Ors.
Vs.
Shri Mana Ram and Ors.

Date of Order : 04/04/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Suresh Shrimali for the petitioners.
Mr. Kailash Trivedi for the respondents.

BY THE COURT:-

By the instant writ petition under Article 226 and 227 of the Constitution of India, the petitioners have challenged the order dated 02.8.2005 Annex.14 passed by the Authority under the Payment of Wages Act Pali (for short 'the Authority' hereinafter).

Heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that a claim was filed by the respondents before the Authority under Section 15 (2) of the Payment of Wages Act, 1936 (for short 'the Act' hereinafter). By order Annex.7 dated 8.12.2004, the Authority directed the petitioners to pay the

outstanding salary, leave salary, compensation and expenses to the respondents amounting to Rs. 2,17,000/- within a period of 30 days from the date of passing of the order. The order Annex.7 is an ex-parte order. The petitioners moved before the Authority for setting aside of the ex-parte order dated 8.12.2004. The Authority dismissed the application filed by the petitioners vide order Annex.10 dated 28.4.2005. The petitioners again moved by filing a review petition, which came to be dismissed vide order impugned dated 02.08.2005 Annex.14. Hence this petition.

Learned counsel appearing for the respondents submits that a statutory alternative and efficacious remedy of appeal is provided under Section 17 of the Act. Section 17 of the Act reads as under :-

> 17. Appeal.- (1) An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of Section 15, or against a direction made under sub-section (3) or sub-section (4) of that section may be preferred, within thirty days of the date on which the order or direction was made, in a Presidency-town before the Court of Small Causes and elsewhere before the District Court-
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> (a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three thousand rupees or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees, or

(b) by an employed person or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under sub-section (2) of section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under sub-section (4) of section 15.

(1-A) No appeal under clause (a) of sub-section (1) shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

(2) Save as provided in sub-section (1), any order dismissing either wholly or in part an application made under sub-section (2) of section 15, or a direction made under sub-section (3) or sub-section (4) of that section shall be final.

(3) Where an employer prefers an appeal under this section, the authority against whose decision the appeal has been preferred may, and if so directed by the Court referred to in sub-section (1) shall, pending the decision of the appeal, withhold payment of any sum in deposit with it.

(4) The Court referred to in sub-section (1) may, if thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision."

Faced with this situation, learned counsel for the petitioner seeks permission to withdraw the instant writ petition

with liberty to file an appeal under Section 17 of the Act of 1936.

In this view of the matter, the petitioners are permitted to withdraw the instant writ petition with liberty to challenge the orders Annex.7 dated 8.12.2004, Annex.10 dated 28.4.2005 and Annex.14 dated 2.8.2005 by filing an appeal before the District Court.

The writ petition is dismissed as withdrawn with the liberty to the petitioners to file an appeal before the District Judge against the orders Annex.7 dated 8.12.2004, Annex.10 dated 28.4.2005 and Annex.14 dated 2.8.2005 within 15 days along with an application under Section 5 of the Limitation Act seeking condonation of delay and if such an appeal is filed by the petitioners, the District Judge, Pali shall consider the application for condonation of delay keeping in view the fact that the petitioners have been prosecuting the remedy before this Court since 21.10.2005. No order as to costs.

(H.R.PANWAR),J.

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